

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	No. 2:08cr5(1)
	§	
DAMIEN DONTE PORTER	§	

**FINDINGS OF FACT AND RECOMMENDATION ON GUILTY PLEA**  
**BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Court for administration of a plea of guilty and allocution under Rule 11 of the Federal Rules of Criminal Procedure.

On January 14, 2009, this cause came before the undersigned United States Magistrate Judge for a plea of guilty and allocution of the defendant on an indictment charging the defendant in Count 1 with a violation of 21 U.S.C. § 846, Conspiracy to Possess with Intent to Distribute 5 Kilograms or more of Cocaine and in Count 5 with a violation of 18 U.S.C. §922(g)(1), Prohibited Person in Possession of a Firearm. After conducting said proceeding in the form and manner prescribed by Fed. R. Crim. P. 11, the Court finds:

a. That the defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge, subject to a final approval and imposition of sentence by the District Court.

b. That the defendant and the government have entered into a plea agreement which has been filed and disclosed in open court pursuant to Fed. R. Crim. P. 11(e)(2).

c. That the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that the plea

of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

d. That defendant understands his constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States District Judge.

IT IS THEREFORE RECOMMENDED that the District Court accept the Plea Agreement and the Guilty Plea of the defendant and that Damien Donte Porter should be finally adjudged guilty of that offense.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within ten days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglas v. United States Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 23rd day of January, 2009.

  
CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE